vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3931 OF 2005
IN
SUMMARY SUIT NO.3090 OF 2004

M/s.Sambhav Interchem Pvt. Ltd. ... Plaintiff

V/s.

M/s.Reliance Cellulose Products Ltd. ... Defendant

Mr.Shailesh Shah with Hina Mehta for Plaintiff
Mr.Ajay Shetye i/b P.Parsurampuria for Defendant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 8, 2006**

P.C.:

. The Motion has been filed for setting aside the decree passed on 26.10.2005 when a Summons for Judgment in Summary Suit No.3090 of 2004 was made absolute. The Defendants claim that due to the fault of the Managing Clerk of their advocate, the Defendants could not remain present in Court. The Defendants also claim that their advocate was unwell and therefore the matter went unnoticed.

2. Heard advocates. The defendants should not be penalised for the fault of the advocate on his managing clerk, although the Defendants ought to have been more vigilant.

3. The property of the Defendants is already attached and the decree has been transferred to a Court

in the State of Andhra Pradesh for its execution. The Plaintiff is, therefore, adequately, protected. In the circumstances, I am of view that the decree should be set aside conditionally. The following order will meet the ends of justice:

i) The Defendants to deposit in this Court within four weeks from today an amount of Rs.15 lacs.

ii) On this amount being deposited, the decree shall stand set aside and the Summons for Judgment shall be restored to file.

iii) In the event the deposit as stipulated above is not made, the decree can be executed.

4. Notice of Motion is disposed of accordingly.